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8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 10

11 UNITED STATES OF AMERICA,) No. CR 07-0654 CRB
)
12 Plaintiff,) DEFENDANT'S NOTICE OF
) WITHDRAWAL OF RULE 41
13 v.) MOTION TO SUPPRESS
)
15 LINDA ASHIEGBU and EMMANUEL) Evidentiary Hearing Date:
16 ANYANWU,) Tuesday, July 8, 2008 at 9:00
) a.m.
17 Defendants.)
)

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 19 Pending before this Court are Mrs. Linda Ashiegbu's motion to suppress
 20 statements elicited during a custodial interrogation, and motion to suppress the fruits of a
 21 search based on Federal Rule of Criminal Procedure 41 ("Rule 41.") The defense hereby
 22 withdraws the motion to suppress based on Rule 41.

23 In its memorandum in support of the suppression motions, the defense conceded
 24 the Supreme Court's skeptical view of the suppression remedy arising from Rule 41
 25 violations. The defense further noted the Ninth Circuit's current rule that distinguishes
 26 Supreme Court authority, and which permits suppression in limited circumstances.

27 At the motions hearing on June 11, 2008, the Court emphasized the "heavy
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1 burden” to be “shouldered by the defense” in order to meet the Ninth Circuit’s
2 requirements to merit suppression for a Rule 41 violation. Since that hearing, the defense
3 has re-examined controlling authority and has discussed the Rule 41 motion with co-
4 counsel and both defendants. After this further reflection, the defense has decided to
5 withdraw the Rule 41 suppression motion.

6 This withdrawal is intended to preserve judicial resources and to focus contested
7 factual matters on the remaining *Miranda* / Fifth Amendment motion. The withdrawal is
8 not a concession as to the merits of the Rule 41 motion.

9 Because the defense withdraws the Rule 41 suppression motion, it additionally
10 withdraws the declaration of Andrew Ashiegbu submitted in support of that motion. The
11 defense will not be calling Mr. Ashiegbu to testify at the evidentiary hearing. The defense
12 will call Mrs. Linda Ashiegbu to testify at the evidentiary hearing in support of the
13 *Miranda* / Fifth Amendment motion.

14 Mr. Andrew Ashiegbu has not formally joined in the Rule 41 motion. Therefore,
15 Mrs. Linda Ashiegbu’s withdrawal of the motion removes that matter from before the
16 Court.

17 Undersigned counsel has called and explained this withdrawal to AUSA Danner,
18 and the parties have met and conferred regarding anticipated witnesses at the evidentiary
19 hearing. All discovery matters relating to that hearing have been resolved through this
20 meet and confer process.

21 Dated: June 26, 2008

22 Respectfully submitted,

23 BARRY J. PORTMAN
24 Federal Public Defender

25 /s

26 STEVEN G. KALAR
27 Assistant Federal Public Defender
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